

IN THE COURT OF APPEALS OF TENNESSEE

FILED

January 13, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

DOROTHY C. THOMPSON	:	CUMBERLAND PROBATE
	:	CA No. 03A01-9608-PB-00254
Plaintiff-Appellant	:	
	:	
vs.	:	HON. LARRY WARNER
	:	SPECIAL JUDGE
	:	
CHARLES EDWARD THOMPSON	:	
	:	
Defendant-Appellee	:	AFFIRMED

BRETT A. YORK and CYNTHIA S. LYONS, WITH DONALD JAKE GAMBLE & ASSOCIATES, OF CROSSVILLE, TENNESSEE, FOR APPELLANT

TOM BEESLEY, OF CROSSVILLE, TENNESSEE, FOR APPELLEE

O P I N I O N

Sanders, Sp.J.

The Plaintiff has appealed from a judgment of divorce, insisting the trial court made an inequitable division of marital property. We cannot agree, and affirm.

The Plaintiff-Appellant, Dorothy C. Thompson, and Defendant-Appellee Charles Edward Thompson were married February 4, 1994. At the time of the marriage, the wife was 54 years of age and the husband was 51 years of age. It was the fifth marriage for the wife and the second marriage for the husband. The

marriage was of very short duration. The wife moved out of the marital home and filed suit for a divorce in November, 1995. No children were born to the marriage.

The parties met for the first time in November, 1993, while the husband was confined to a psychiatric hospital undergoing therapy for depression brought on by the death, in August of that year, of his wife of 28 years. They started dating and were married some three months later. At the time of their marriage, both parties were working. The wife was employed by the Town of Pleasant Hill as recorder for the town at \$7.75 an hour. The husband was employed as the head carpenter and inspector at Fairfield Glade at \$10 per hour.

It appears that at the time of the marriage the wife owned an 8-acre tract of land with a trailer on it which was unencumbered. She also owned an automobile which was paid for and she had approximately \$100 in cash. She owed an undisclosed amount on credit cards.

At the time of the marriage, the husband had \$57,000 in cash, \$50,000 of which came from life insurance on his deceased wife. He had \$8,000 in each of two IRA's for a total of \$16,000. He owned a house in which he and his deceased wife had lived worth \$52,500 and he owned a 4.1-acre tract of land with a residence under construction worth approximately \$30,000. He owned carpenter tools valued at approximately \$20,000. He owned a 1966 model pickup truck and a 1985 model Oldsmobile which had been owned by his deceased wife, all of which totaled in excess of \$175,000.

After the marriage, both of the parties continued to work at their employment. They opened a joint bank account with the understanding they would each put their earnings in the joint account. After the joint checking account was opened, the husband put all of his money in the joint account but the wife did not put her money in the account. The wife took charge of the joint checking account and apparently wrote all the checks, etc., but would not give the husband any information about the account or give him any information about how the funds were spent.

The husband transferred into the account the \$57,000 in cash which he had at the time of the marriage. The husband's undisputed testimony is to the effect that the wife pressured him into doing the following things: 1. selling the house in which he and his deceased wife had lived for \$52,500, 2. cashing in the two IRA's for \$16,000, and 3. selling his carpenter tools which had a value of approximately \$20,000, all of which went into the joint checking account; and also to make a deed to her creating an estate by the entirety between them in the 4.1-acre tract of land which had the incomplete residence on it and which had a value of approximately \$30,000.

The construction of the uncompleted residence on the 4.1-acre tract had all been done by the husband in his spare time as a carpenter. The proof showed he started the construction on the property in 1987. He cleared the land and prepared it for a residence. He had laid all the block for the house. He purchased the floor joist, 2 x 4's and materials for the construction except for the interior. He had the walls, doors, windows, floors and roof on the building.

When the parties were married they moved into the wife's trailer and lived there for about 10 months. In the evenings after work at their regular jobs, the husband, with the help of the wife, worked on the interior of the unfinished house until it was finished. They then moved into the house. They had lived in the house less than a year when the wife moved out and sued for a divorce.

At the time of the separation of the parties, the husband closed out the joint bank account and there was then only \$28,000 in the account. The record shows some of the funds deposited by the husband in the joint account were spent for medical expenses and some for materials which went into the unfinished residence but, for the most part, the money is unaccounted for in the record. The following is descriptive of the husband's testimony as to his inability to get information from the wife relating to the joint checking account:

"Q. Did your wife manage to keep track of the books and the checkbook and everything?

"A. She kept all that. I would ask her, I'd say, can I see the statements, the cancelled checks for this month or that month? Well, what are you looking for? What are you trying to find? I said, nothing. I just want to see them. I want to see where the money, you know, everything.

"Q. You never did get to see them?

"A. No, I didn't. Even if they came over to the Route 4, Box 318, where we live now, she said they was over at the trailer. I don't know. She maybe took them over there. I don't have any idea.

"Q. Okay. She wasn't putting her money into this pot where your money was going?

"A. No, sir.

"Q. Did she buy stuff for you? Did she give you money?

"A. She would sometimes give me \$15 or \$20 to live on during that week, to buy food with, you know, for lunch or whatever. And it got down to where she wouldn't even give me but \$10 per week."

In her complaint for a divorce, as pertinent, the wife alleged "grounds for divorce exist for both parties, and that said grounds are stipulated pursuant to Tennessee Code Annotated § 36-4-129." The only relief prayed for by the wife in her complaint was for a divorce and an equitable division of marital property. The only marital property for division between the parties over which there was any dispute was the residence, the construction of which had been completed after the marriage, including the 4.1-acre of land on which it was located. It was the contention of the wife upon the trial of the case and upon this appeal that the deed which the husband executed creating an estate by the entirety in the 4.1-acre tract of land constituted a gift to her of a one-half interest in the property. It was, and is, her further insistence that the property had a value of \$80,000 and the court should award her \$40,000 for her one-half interest in the property.

The husband takes the position the deed executed by him did not constitute a gift of any interest in the 4.1-acre tract of land but transformed it from separate property to marital property with the right of survivorship in the parties. The husband also takes the position the residence and 4.1 acres of land have a value of \$50,000, not \$80,000.

In his determination of the case, the court awarded the parties a divorce pursuant to TCA § 36-4-121. He awarded the wife the 1995 Chevrolet Beretta automobile which the husband had purchased for her, but she was to pay the balance of the unpaid purchase price. He awarded the marital house located on the 4.1-acre tract of land, valued at \$50,000, to the husband and ordered the husband to pay the wife \$7,500 for her interest in the property.

The wife has appealed, presenting the following issues for review: 1. "Whether the trial court erred in failing to award the Plaintiff one-half of the value of the house and land as her separate property because the Defendant had made a gift of that property to the Plaintiff" and 2. "Whether the trial court erred in failing to make an equitable division of the marital estate because although the house and land were separate property prior to the parties' marriage, they became marital property after the marriage due to transmutation."

We cannot agree the court was in error in his award of the residence to the husband, and affirm for the reasons hereinafter stated.

Under the issues, as presented, we must first determine whether the deed executed by the husband constituted a gift to the wife or created marital property. It is plain from the wording of the deed it did nothing more than create an estate by the entirety. As pertinent, the deed reads, in part, as follows: "for and in consideration of love and affection I have for my dear wife, and for the purpose of creating with her a tenancy by the entirety in and to the whole thereof, I make this conveyance. For said

consideration and for said purpose, I CHARLES THOMPSON, transfer and convey to DOROTHY C. THOMPSON, all the rights, title and interest in the within described real property to carry out said purpose. TO HAVE AND TO HOLD all of that right, title and interest in said property needed to carry out the intent and purpose herein stated...."

In the case of **Covington v. Murray**, 220 Tenn. 265, 416 S.W.2d 761, 764 (1967) our supreme court quoted with approval as follows:

"An estate by the entirety is one limited to the lifetime of the husband and wife; indeed, it is one limited to the continuance of the relationship of husband and wife. It is an estate which can be ended by the joint conveyance of husband and wife. It is like a joint estate, in that each is entitled to an equal interest and to take the whole upon the death of the other. It is unlike a joint estate, in that neither can separate his interest from the other except by the joint action of both or by operation of law. This result is based upon the legal notion of the unity of two persons who are husband and wife."

We hold the deed did not constitute a gift of a half interest in the property, but created a right of survivorship in marital property.

In his final determination of the case, the trial court filed a comprehensive finding of fact in which he pointed up the amount of cash the husband had contributed to the marriage and the relatively small amount remaining at the time of the separation of the parties. He observed the very short duration of the marriage and, as pertinent, he said: "In making an equitable division of the marital property, the court has considered the relevant factors set out in TCA § 36-4-121, including the duration of the marriage, the physical health, mental health, and employability of the

parties, the contribution of each party to the acquisition, preservation, appreciation, and dissipation of their marital and separate property, the value of the separate property of each party, the value of the estate of each party at the time of the marriage, and the economic circumstances of each party at the time the division of property is to become effective."

TCA § 36-4-124 provides the court shall make an equitable division of marital property as the court deems just. The statute provides that, in making an equitable division of marital property, the court shall consider "the duration of marriage," and "the contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property...." (Emphasis ours.) It appears from the record that the trial court considered each of these factors in his determination of the case.

In the case of **Barnhill v. Barnhill**, 826 S.W.2d 443, 449 (Tenn.App.1991) the court, in addressing the trial court's application of TCA § 36-4-121(a), said:

T.C.A. § 36-4-121(a) provides that marital property should be equitably divided without regard to fault. An equitable division, however, is not necessarily an equal one. Trial courts are afforded wide discretion in dividing the interest of parties in jointly-owned (sic) property. **Harrington v. Harrington**, 798 S.W.2d 244 (Tenn.Ct.App.1990); **Fisher v. Fisher**, 648 S.W.2d 244, 246 (Tenn.1983). Accordingly, the trial court's distribution will be given great weight on appeal, **Edwards v. Edwards**, 501 S.W.2d 283, 288 (Tenn.Ct.App.1973), and will be presumed to be correct unless we find the preponderance of the evidence is otherwise. **Lancaster v. Lancaster**, 671 S.W.2d 501, 502 (Tenn.Ct.App.1984).

Also, in **Batson v. Batson**, 769 S.W.2d 849 (Tenn.App.1988) this court, in addressing the application of TCA

§ 36-4-121(c)(1), said:

Tenn. Code Ann. § 36-4-121(c)(1) permits trial courts to consider the duration of the marriage. In cases involving a marriage of relatively short duration, it is appropriate to divide the property in a way that, as nearly as possible, places the parties in the same position they would have been in had the marriage never taken place. **In re Marriage of McInnis**, 62 Or.App.524, 661 P.2d 942, 943 (1983).

When relatively short marriages are involved, each spouse's contributions to the accumulation of assets during the marriage is an important factor. **In re Marriage of Peru**, 56 Or.App. 300, 641 P.2d 646, 647 (1982). When a marriage is short, the significance and value of a spouse's non-monetary contributions is diminished, and claims by one spouse to another spouse's separate property are minimal at best. **In re Marriage of Wallace**, 315 N.W.2d 827, 830-31 (Iowa Ct.App.1981).

Considering the marriage of the parties had a duration of less than two years and that the funds, which were the separate property of the husband and which were placed in the joint checking account, were dissipated by approximately \$100,000, it cannot be said the court's division of the marital property was inequitable.

The judgment of the trial court is affirmed. The cost of this appeal is taxed to the Appellant and the case is remanded to the trial court for any further, necessary proceedings.

Clifford E. Sanders, Sp.J.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.